

Notice of Allowability

Application No.

10/727,491

Examiner

Richard A. Rosenberger

Applicant(s)

IBARRA ET AL.

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Request for Continued Examination (RCE) filed 9/6/2006.
2. ☒ The allowed claim(s) is/are 1-9, 11-14, 16-19, 21-50 and 52-57.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: ____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date ____.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date ____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>9/13/2006</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date ____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other ____. |

1. An examiner's amendment to the record appears below.

Amend claim 1 as follows:

1. (currently amended): A method of sorting plant products based on damage to the plant products, the method comprising the steps of:

emitting an illumination light toward an outer surface of a plant product to produce a narrow beam defining a line of light on said outer surface that is perpendicular to a travel direction of the plant product;

detecting with a narrow field of view overlapping said line of light on said outer surface substantially a single wavelength of a reflected light produced by the plant product responsive to the illumination light without detecting light at other wavelengths;

rotating the plant product about an axis parallel to said direction of travel and at a predetermined rotation rate;

determining, in response to reflected light from a plurality of detected narrow beams accumulated sequentially as the plant product is moved and rotated in a direction of travel, at least one of a presence, an amount, and a severity of damage responsive to the reflected light solely at a single wavelength; ~~and~~

assigning a damage category to the plant product responsive to the determination of damage[.]; and

sorting a plant product on the basis of an assigned category.

2. This amendment was made to avoid possible questions of subject matter eligibility of claim 1 and claims dependent therefrom under the "Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility", OG Notices: 22 November 2005.
3. Authorization for this examiner's amendment was given in a telephone interview with Alan J. Kasper (25,426) on 13 September 2006.
4. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.
5. The following is an examiner's statement of reasons for allowance:

The art does not teach or suggest the claimed combination of the claims, in particular the combination of "a narrow beam defining a line of light on said outer surface" which is "perpendicular to a travel direction of the plant product" in combination with means for "rotating the plant product about an axis parallel to the direction of travel at a predetermined rotation rate" and in combination with the remainder of the claimed subject matter.

Campbell et al (US 5,791,497) in particular discloses having the light sources (40) arranged to produce a "line focus" (column 5, line 48), but this line of light is not

perpendicular as claimed, and the system of Campbell et al does not rotate the plant product.

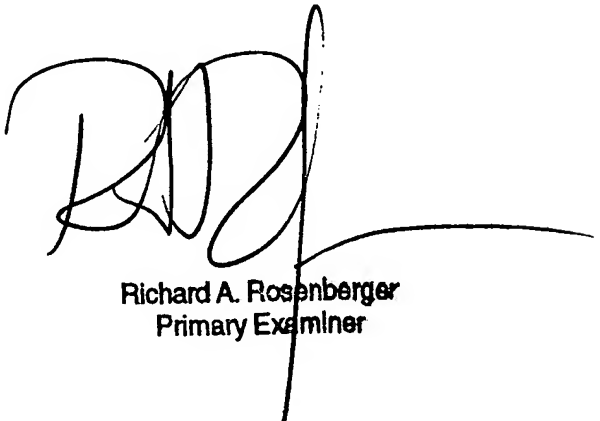
Conway (5.164,795) shows rotating the plant product, but does not show the claimed perpendicularly directed line of light on the surface of the product as claimed.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richard A Rosenberger whose telephone number is (571) 272-2428. The examiner can normally be reached on Monday through Friday during the hours of 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory J. Toatley, Jr. can be reached on (571) 272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

R. A. Rosenberger
14 September 2006



Richard A. Rosenberger
Primary Examiner